

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Invasive
Species/Infested Waters Civil Citation of
Bradley Allan Gohla

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION
UPON DEFAULT**

This matter came on for a prehearing conference before Administrative Law Judge Barbara J. Case on July 15, 2014.

There was no appearance by, or on behalf of the Minnesota Department of Natural Resources (Department). Bradley Allan Gohla (Respondent) appeared on his own behalf.

STATEMENT OF THE ISSUES

1. Whether Respondent improperly failed to remove the drain plug from his watercraft in violation of Minn. Stat. § 84D.105, subd. 4(b).

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department is in default and recommends that the Commissioner **DISMISS** the citation.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 6, 2014, Conservation Officer Brent Ihnen issued citation number 127100 to Respondent.

2. On June 6, 2014, by letter to the Department, Respondent appealed citation 127100.

3. On June 24, 2014, the Department sent notice of the appeal to the Office of Administrative Hearings

4. On June 26, 2014, a Notice and Order for Prehearing Conference and Hearing (Notice and Order for Hearing) in this matter was mailed to Respondent at the address listed on the citation.¹

5. On June 26, 2014, a Notice and Order for Prehearing Conference and Hearing (Notice and Order for Hearing) in this matter was mailed to Conservation Officer Brent Ihnen at the address provided to the Office of Administrative Hearings by the Department.²

6. Neither Notice was returned to the Office of Administrative Hearings as undeliverable.

7. The Notice and Order for Hearing indicated that a Prehearing Conference would be held in this matter on July 15, 2014, at 11:00 p.m., by way of telephone conference call.³

8. Minnesota Rule 1400.6000 states:

The agency or judge, where authorized, may dispose of a contested case adverse to a party which defaults. Upon default, the allegations of or the issues set out in the notice of and order for hearing or other pleading may be taken as true or deemed proved without further evidence. A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing or fails to comply with any interlocutory orders of the judge.

9. The Notice stated that a request for a delay in the prehearing conference or hearing could be made if the request was made in advance, in writing and served on the other party.⁴ No one appeared at the July 15, 2014 Prehearing Conference on behalf of Department. No request was made for a continuance, nor was any communication received by the undersigned from the Conservation Officer or Department prior to the July 15, 2014 Prehearing Conference.

10. The Respondent appeared by telephone at the prehearing conference.

11. The Conservation Officer's failure to appear at the Prehearing Conference was without consent of the Administrative Law Judge.

12. Because the Department failed to appear at the Prehearing Conference, the Department is in default.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

¹ See Affidavit of Kendra McCausland.

² See letter to Office of Administrative Hearings from Capt. Todd Kanieski, June 24, 2014.

³ Notice and Order for Prehearing Conference and Hearing, at 1.

⁴ *Id.* at 1.

CONCLUSIONS OF LAW

1. The Minnesota Department of Natural Resources and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 84D.13, subd. 8 and 116.072, subd. 6.

2. The Conservation Officer received timely and proper notice of the Prehearing Conference in this matter when the Notice and Order for Prehearing Conference and Hearing was mailed to the address provided by the Department.

3. Under Minn. R. 1400.6000, the Department is in default as a result of its failure to have a representative appear at the scheduled prehearing conference.

4. The Department bore the burden of proof to establish that Respondent violated Minn. Stat. 84D.10, subd. 4(b).

5. Having offered no evidence in support of its claim, the Department did not establish that the Respondent violated Minn. Stat. 84D.10, subd. 4(b).

6. Dismissal of the claim is the appropriate result.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Natural Resources **DISMISS** citation number 127100.

Dated: July 17, 2014

s/Barbara J. Case

BARBARA J. CASE
Administrative Law Judge

Reported: Default

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63 – 14.69.